

United States
Circuit Court of Appeals
For the Ninth Circuit.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Appellant,

vs.

CAPAY DITCH COMPANY, a Corporation,
YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER AND POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D. STE-
PHENS and JOSEPH CRAIG,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Second Division.

Filed

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F. D. Monckton,
Clerk.



No. 2500

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States District Court for the Northern
District of California.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation,
YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER AND POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D. STE-
PHENS, and JOSEPH CRAIG,
Defendants.

Bill to Redeem.

The above-named plaintiff complains of the de-
fendants above named, and for cause of action al-
leges:

I.

That the plaintiff now is, and ever since the ninth
day of April, 1913, has been, a corporation duly or-
ganized and existing under and by virtue of the laws
of the State of Arizona.

II.

That the defendant Capay Ditch Company now is,
and at all the times hereinafter set forth has been, a
corporation duly organized and existing under and
by virtue of the laws of the State of California.

III.

That the defendant Yolo County Consolidated
Water Company now is, and at all the times herein-
after mentioned has been, a corporation duly organ-

ized and existing under and by virtue of the laws of the State of California.

IV.

That the defendant Yolo Water and Power Company now is, and at all times since December 11, 1911, has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

V.

That the defendants J. M. Adamson, L. D. Stephens, and [1*] Joseph Craig are each and all residents and citizens of the State of California.

VI.

That on the 18th day of November, 1907, Central Counties Land Company, a corporation, duly organized and then existing under and by virtue of the laws of the State of California, was the owner, and in possession, and was entitled to the possession of all those certain lots, pieces or parcels of land situate, lying and being in the County of Lake, State of California, described as follows:

Lots two (2), three (3), and four (4), section six (6), township twelve (12) north, range six (6) west.

Lot four (4), section thirty-one (31), township thirteen (13), range six (6) west.

The northwest quarter of the southwest quarter of section thirty-one (31), township thirteen (13) north, range six (6) west.

The northwest quarter of the southeast quarter, the southeast quarter of the southeast quarter, the northeast quarter of the southeast quarter, the south-

*Page-number appearing at foot of page of original certified Record.

west quarter, and the southwest quarter of the southeast quarter of section thirty-six, township thirteen (13) north, range seven (7) west.

The fractional east half of the northwest quarter of section one (1) township twelve (12) north, range seven (7) west.

Commencing at a stake standing on the north line of section one (1), township twelve (12) north, range seven (7) west twenty (20) chains east from the northwest corner of said section, thence south on subdivision line of the northwest quarter of said section twenty-three (23) chains; thence north thirty-nine (39 deg.) degrees fifty-three (53') minutes west, twenty-nine and sixty-five hundredths (29.65) chains, to the northwest corner of said section; thence east on section line twenty (20) chains to the place of beginning.

That portion of the northwest quarter of the northwest quarter of section (1) township twelve (12) north, range seven (7) west, bounded on the north by the township line, on the south by Cache Creek, on the east by the intersection of Cache Creek and the township line, and on the west by the subdivision line dividing sections one (1) and two (2) of said township.

Lots one (1), two (2), three (3), four (4), five (5) and six (6) of section two (2), township twelve (12) north, range seven (7) west.

The southeast quarter of the northwest quarter of section two (2), township twelve (12) north, range seven (7) west.

That portion of the west half of the northwest

quarter of said section 2, lying east of the County Road running from Lower Lake to Colusa, and of a line commencing at the northwest corner of the northeast quarter of the southwest quarter of said section two (2); thence north fifty-three (53 deg.) degrees west, eleven and sixty-three hundredths (11.63) chains; thence north forty-one and one-fourth ($41\frac{1}{4}$) degrees west, four and forty-eight [2] hundredths (4.48) chains; thence north twenty-two (22 deg.) degrees west four and twenty-eight hundredths (4.28) chains; thence north twenty-five (25 deg.) degrees east, fourteen (14) chains; thence north seven and one-half ($7\frac{1}{2}$) degrees west sixteen and fifty-eight hundredths (16.58) chains; thence north thirty-two and one-half ($32\frac{1}{2}$) degrees east, five and five hundredths (5.05) chains, and north two (2 deg.) degrees west, seven and twenty-nine hundredths (7.29) chains.

Lots three (3), four (4) and seven (7), and the northeast quarter of the southeast quarter of section thirty-four (34), township thirteen (13) north, range seven (7) west.

Lots one (1) and three (3) of section thirty-five (35), township thirteen (13) north, range seven (7) west.

Said above-described pieces and parcels containing in all one thousand and five (1,005) acres.

The east half of the northeast quarter and the east half of the southeast quarter of section nineteen (19), township twelve (12) north, range seven (7) west.

All of section twenty (20), township twelve (12)

north, range seven (7) west.

The west half of section twenty-one (21) township twelve (12) north, range seven (7) west.

Said last three described pieces and parcels containing one thousand and one hundred and twenty (1,120) acres.

VII.

That on the said 18th day of November, 1907, the said Central Counties Land Company borrowed of and received from the defendant Capay Ditch Company three several sums of money, in the amounts respectively of five thousand six hundred twenty-five (\$5,625.00) dollars; eight thousand three hundred twenty and 75/100 (\$8,320.75) dollars, and ten thousand six hundred twenty-five (\$10,625.00) dollars, and made, executed and delivered unto the said Capay Ditch Company, defendant herein, its three several promissory notes for said respective amounts, said promissory notes being respectively in words and figures following, to wit:

“\$5625.00

San Francisco, November 18th, 1907.

On or before August 1, 1908, Central Counties Land Company, a California corporation, promises to pay to the Capay Ditch Co., or order, at its office in the City of Woodland, State of California, the sum of five thousand six hundred and twenty-five (\$5625.00) dollars, with interest commencing April 1st, 1908, at the rate of seven per cent (7%) per an-

num, both principal and interest payable in United States Gold Coin.

(Signed)

CENTRAL COUNTIES LAND COMPANY.

By L. S. LACY,

Vice-President.

By EDWARD O. ALLEN,

Secretary. [3]

(Endorsed: E. P. Vandercook. J. Dalzell Brown. Demand, Notice of Nonpayment and Protest Waived. E. P. Vandercook. J. Dalzell Brown.)”

“\$8320.75

San Francisco, Cal., November 18, 1907.

On or before August 1, 1908, Central Counties Land Company, a California corporation, promises to pay to the Capay Ditch Co., or order, at its office, in the City of Woodland, State of California, the sum of eight thousand three hundred and twenty and 75/100 (\$8320.75) dollars, with interest commencing January 19, 1908, at the rate of seven per cent (7%) per annum, both principal and interest payable in United States Gold Coin.

(Signed) CENTRAL COUNTIES LAND COMPANY.

By L. S. LACY,

Vice-President.

EDWARD O. ALLEN,

Secretary.

(Endorsed: E. P. Vandercook. J. Dalzell Brown. Demand, Notice of Nonpayment and Protest Waived. E. P. Vandercook. J. Dalzell Brown.)”

“\$10,625.00

San Francisco, Cal., November 18, 1907.

On or before August 1, 1908, Central Counties Land Company, a California corporation, promises to pay to the Capay Ditch Company, or order, at its office in the City of Woodland, State of California, the sum of ten thousand six hundred and twenty-five (\$10,625.00) dollars, with interest from date at the rate of seven per cent (7%) per annum, both principal and interest payable in United States Gold Coin.

(Signed) CENTRAL COUNTIES LAND
COMPANY.

By L. S. LACY,

Vice-President.

EDWARD O. ALLEN,

Secretary.

(Endorsed: E. P. Vandercook. J. Dalzell Brown. Demand, Notice of Nonpayment and Protest Waived. E. P. Vandercook, J. Dalzell Brown.)”

[4]

VIII.

That contemporaneously with the execution and delivery of the said promissory notes, and as a part and parcel of the same transaction, and solely for the purpose of securing the payment of the said promissory notes, together with interest thereon, at the times and in the manner therein provided for, the said Central Counties Land Company made, executed and delivered unto said Capay Ditch Company, an instrument in writing in form a deed, but intended as a mortgage, which said instrument was

in substantially the words and figures following:

“THIS INDENTURE made and entered into this 18th day of November, 1907, by and between Central Counties Land Company, a California corporation, party of the first part, and Capay Ditch Company, a California corporation, party of the second part WITNESSETH:

That the party of the first part, for and in consideration of the sum of ten dollars, gold coin of the United States, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has bargained, granted, sold and conveyed, and does by these presents grant, bargain, sell and convey unto the party of the second part, its successors and assigns, all those certain lots, pieces or parcels of real property, situate, lying and being in the County of Lake, State of California, and described as follows:—

Lots two (2), three (3) and four (4), section six (6), township twelve (12) north, range six (6) west.

Lot four (4) section thirty-one (31), township thirteen (13) north, range six (6) west.

The northwest quarter of the southwest quarter of section thirty-one (31), township thirteen (13) north, range six (6) west.

The northwest quarter of the southeast quarter, the southeast quarter of the southeast quarter, the northeast quarter of the southeast quarter, the southwest quarter and the southwest quarter of the southeast quarter of section thirty-six (36) township thirteen (13) north, range seven (7) west.

The fractional east half of the northwest quarter

of section one (1) township twelve (12) north, range seven (7) west.

Commencing at a stake standing on the north line of section one (1) township twelve (12) north, range seven (7) west, twenty (20) chains east from the northwest corner of said section; thence south on subdivision line of the northwest quarter of said section; twenty-three (23) chains; thence north thirty-nine (39 deg.) degrees fifty-three (53') minutes west, twenty-nine and sixty-five hundredths (29.65) chains to the northwest corner of said section; thence east on section line twenty (20) chains to the place of beginning.

That portion of the northwest quarter of the northwest quarter of section one (1), township twelve (12) north, range seven (7) west, bounded on the north by the township line, on the south by Cache Creek, on the east by the intersection of Cache Creek and the township line, and on the west by the [5] subdivision line dividing sections one (1) and two (2) of said township.

Lots one (1), two (2), three (3), four (4), five (5) and six (6), of section two (2), township twelve (12) north, range seven (7) west.

The southeast quarter of the northwest quarter of section two (2), township twelve (12) north, range seven (7) west.

That portion of the west half of the northwest quarter of said section two (2) lying east of the County Road running from Lower Lake to Colusa, and of a line commencing at the northwest corner of the northeast quarter of the southwest quarter of

said section two (2); thence north fifty-three (53 deg.) degrees west, eleven and sixty-three hundredths (11.63) chains; thence north forty-one and one-fourth ($41\frac{1}{4}$) degrees west, four and forty-eight hundredths (4.48) chains; thence north twenty-two (22 deg.) degrees west four and twenty-eight hundredths (4.28) chains; thence north twenty-five (25 deg.) degrees east, fourteen (14) chains, thence north seven and one-half ($7\frac{1}{2}$) degrees west sixteen and fifty-eight hundredths (16.58) chains; thence north thirty-two and one-half ($32\frac{1}{2}$ deg.) degrees east, five and five-hundredths (5.05) chains, and north two (2 deg.) degrees west, seven and twenty-nine hundredths (7.29) chains.

Lots three (3), four (4) and seven (7), and the northeast quarter of the southeast quarter of section thirty-four (34), township thirteen (13) north, range seven (7) west.

Lots one (1) and three (3) of section thirty-five (35), township thirteen (13) north, range seven (7) west.

Said above-described pieces and parcels containing in all one thousand and five (1,005) acres.

The east half of the northeast quarter, and the east half of the southeast quarter of section nineteen (19), township twelve (12) north, range seven (7) west.

All of section twenty (20), township twelve (12) north, range seven (7) west.

The west half of section twenty-one (21) township twelve (12) north, range seven (7) west.

Said last three described pieces and parcels con-

taining one thousand and one hundred and twenty (1,120) acres.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the above described property, together with the appurtenances unto the said party of the second part, its successors and assigns forever.

This conveyance is made, executed and delivered in pursuance of a resolution of the Board of Directors of Central Counties Land Company, duly adopted under the provisions of law and the by-laws of said corporation, authorizing and directing the President and Secretary to make, execute and deliver this conveyance.

IN WITNESS WHEREOF, said Central Counties Land Company, a California corporation, has caused these premises to be subscribed by its President and Secretary, thereunto duly authorized, and its corporate seal to be hereto affixed the day and year first hereinabove written.

[Corporate Seal]

(Signed) CENTRAL COUNTIES LAND
COMPANY.

By LED. F. WINCHELL,
President.

EDWARD O. ALLEN,
Secretary. [6]

IX.

That the resolution of the Board of Directors of said Central Counties Land Company, authorizing and directing the President and Secretary of said corporation to make, execute and deliver the above and foregoing instrument,—being the same resolution referred to in said instrument, a copy of which is above set forth,—was and is in the words and figures following, to wit:

“BE IT RESOLVED that this corporation offer and deposit as security for the payment of the notes authorized in the foregoing resolutions, such security to be returned in the event of such payment, the deed of this corporation conveying to the Capay Ditch Company, a California corporation, that certain property in Lake County, California, conveyed to this corporation by said Capay Ditch Company by deed dated January 24th, 1907, and recorded in volume 39 of Deeds, at page 355 and following, Records of Lake County, excepting therefrom the swamp and overflowed lands therein described; and also as such security debenture certificates of this Company, as authorized August 13th, 1906, of the face value amounting to Five thousand dollars (\$5,000.00); and

“BE IT FURTHER RESOLVED that the President and Secretary of this corporation be and they are hereby authorized and directed to execute under its official seal the grant, bargain and sale deed of this corporation, as aforesaid, and also to execute and issue debenture certificates of this corporation, as aforesaid, and to deposit the same as

security for the payment of said notes, and to do any acts which they may deem necessary to effectuate the intent of this resolution.”

X.

That the property referred to in the above and foregoing resolution as “that certain property in Lake County, California, conveyed to this corporation by said Capay Ditch Company by deed dated January 24th, 1907, and recorded in volume 39 of Deeds, at page 355 and following, Records of Lake County, excepting therefrom the swamp and overflowed lands therein described,” is the same property hereinbefore particularly described in paragraphs VI and VIII of this Bill.

XI.

That thereafter, and on the 20th day of March, 1908, the said defendant Capay Ditch Company caused the said written [7] instrument to be recorded in volume 41 of Deeds, at page 161, of the records of the County of Lake, State of California.

XI.

That in addition to the execution and delivery of the said instrument, in form a deed but intended as a mortgage, as aforesaid, and as further security for the payment of the promissory notes therein referred to, said Central Counties Land Company issued, executed and delivered unto the said defendant Capay Ditch Company debenture certificates issued by said Central Counties Land Company, of the face or par value of five thousand (\$5,000.00) dollars, which said debentures were respectively in words and figures as follows, to wit:

“UNITED STATES OF AMERICA.

STATE OF CALIFORNIA.

\$500

No. —.

\$500

CENTRAL COUNTIES LAND COMPANY.

Incorporated Under the Laws of the State of California.

Authorized Capital Stock One Million Dollars.

San Francisco, California, September 1st, 1906.

For value received, Central Counties Land Company promises to pay to bearer, at its office in the City and County of San Francisco, State of California, on the 1st day of September, A. D. 1926, the sum of Five Hundred Dollars (\$500.00) in gold coin, of the United States of America of the present standard of weight and fineness, together with interest thereon, from date until paid at the rate of six per cent a year in like gold coin, payable semi-annually on the first days of January and July of each year at its said office in the City and County of San Francisco, State of California.

PROVIDED, however, that Central Counties Land Company may at any time retire this debenture certificate upon payment of the principal and interest to date of payment; and whenever Central Counties Land Company shall publish a notice for thirty consecutive days, in a daily newspaper published in the City and County of San Francisco, State of California, of its intention to retire this debenture certificate, and to pay the holder thereof the principal and interest as herein provided, on a day not more than forty days but not less than thirty

days after the commencement of the publication of said notice, the holder hereof shall present the same for payment, and if it is not so presented for payment, this certificate shall cease to bear interest from and after said day, but the principal and interest thereon up to and including said day, shall be payable to the holder hereof on demand.

This debenture certificate is one of a series of two thousand (2000) certificates of like form, tenor and effect, [8] and of like amount, bearing date this day, and numbered consecutively from 1 to 2000, both inclusive, amounting in the aggregate to one million dollars (\$1,000,000.00), and all the property of Central Counties Land Company now owned, and all that it may hereafter acquire, is hereby mortgaged and pledged to secure the payment of the principal and interest of this debenture certificate, and of all the other certificates of this series, and all of said certificates of this series are hereby constituted a lien on all the property of Central Counties Land Company, now owned, or hereafter acquired, provided, however, that Central Counties Land Company may sell any of the property hereby mortgaged, pledged or hypothecated to secure this debenture certificate free and clear from the lien created hereby, whenever the Board of Directors of said Company, by a resolution duly and regularly adopted, so direct; but the proceeds of said sale shall, in that event, be applied to the redemption of certificates of indebtedness of the series of which this is one, or be used for the purchase of property deemed by its Board of Directors to be suitable for

the purposes of this corporation.

This debenture certificate shall not be valid until the certificate endorsed hereon shall have been signed by the California Safe Deposit and Trust Company.

IN WITNESS WHEREOF, Central Counties Land Company has caused this debenture certificate to be executed, and its corporate name and seal to be hereunto signed and affixed, by its President and Secretary, thereunto duly authorized, the day and year first hereinabove written.

CENTRAL COUNTIES LAND COMPANY.

_____,
President.

_____,
Secretary.

TRUSTEE'S CERTIFICATE.

It is hereby certified that the within certificate is one of a series of two thousand (2,000) certificates of like tenor, effect, date and amount.

CALIFORNIA SAFE DEPOSIT AND
TRUST COMPANY,

By _____,
Secretary."

That each of said debenture certificates so given as security as aforesaid was signed by said California Safe Deposit and Trust Company.

XII.

That the defendant Yolo County Consolidated Water Company, and the defendants L. D. Stephens and Joseph Craig, at all times had actual knowledge

and notice of the nature of the aforesaid transactions, and of the terms and conditions thereof, and at all times well knew that the said instrument was intended to be, and was, a mortgage given to secure the payment of the said promissory notes, and that the defendant Yolo Water and Power Company has, at all times since its [9] incorporation, had actual knowledge and notice that said instrument was a mortgage.

That, notwithstanding the said actual knowledge and notice of said Yolo County Consolidated Water Company as to the true nature of the aforesaid instrument hereinabove set forth, the said defendant Capay Ditch Company, on or about the 18th day of December, 1911, made, executed and delivered to the said defendant, Yolo County Consolidated Water Company, an instrument, in form a grant, bargain and sale deed, wherein and whereby the said defendant Capay Ditch Company purports to convey to the said defendant Yolo County Consolidated Water Company all of the real property so held by it as security as aforesaid.

That thereafter, and notwithstanding the said actual knowledge and notice of said defendants L. D. Stephens and Joseph Craig as to the true nature of the aforesaid instrument hereinabove set forth, the said defendant Yolo County Consolidated Water Company made, executed and delivered to the defendants L. D. Stephens and Joseph Craig, an instrument in writing, in form a grant, bargain and sale deed, wherein and whereby the said defendant Yolo County Consolidated Water Company pur-

ports to convey unto said defendants L. D. Stephens and Joseph Craig all of the real property so held by it as security as aforesaid.

That, notwithstanding the said actual knowledge and notice of the said defendant Yolo Water and Power Company as to the true nature of the aforesaid instrument, hereinabove set forth, the said defendants L. D. Stephens and Joseph Craig thereafter, and on or about the 20th day of December, 1911, signed and acknowledged an instrument, in form a deed, purporting to convey the said real properties to the defendant Yolo Water and Power Company, and, as plaintiff is informed and [10] believes, and on such information and belief avers, that the said last-named defendants L. D. Stephens and Joseph Craig, on or about the 17th day of June, 1912, delivered the said instrument to the defendant Yolo Water and Power Company.

XIII.

That after the said Central Counties Land Company acquired the ownership and title of and to the real property hereinabove described, as aforesaid, the defendant, J. M. Adamson, prior to the said 18th day of November, 1907, entered into possession of the whole thereof as the tenant of the said Central Counties Land Company, and duly attorned to the said Central Counties Land Company and paid to the said Central Counties Land Company the rental due therefor, at the rate of two hundred dollars per annum, or thereabouts, and regularly paid said rental for all the years preceding the year ending on or about the 30th day of November, 1911.

XIV.

That said Central Counties Land Company through inadvertence and oversight, failed to pay its license taxes to the State of California, due in the year 1911, and, pursuant to proceedings duly taken by the State of California, to that end, its right to do business as a corporation became and was forfeited on the 30th day of November, 1911; that thereupon all of the former directors of said corporation became, under and by virtue of the provisions of the laws of the State of California, Trustees of the corporation for the benefit of its creditors and stockholders.

XV.

That the said defendant J. M. Adamson has at all times been and still is in possession of said property, but that said Adamson has, since said Central Counties Land Company forfeited its charter as aforesaid, refused and neglected to [11] pay the rental of said property to the Central Counties Land Company, or to its Trustees, and without the consent of the said Central Counties Land Company, or of its said Trustees, or of its or their successors, said defendant Adamson has, as plaintiff is informed and believes, and on such information and belief avers, attempted to attorn to the defendant Yolo Water and Power Company, and now claims to be in possession of said property as the tenant of the said defendant Yolo Water and Power Company.

That in addition to the rental so paid by the said defendant J. M. Adamson to the said Central Counties Land Company, the said defendant Adam-

son, as a part of the consideration for the possession of said property, rendered personal services in the matter of looking after and keeping up the said property, of the value of eight hundred dollars (\$800.00) per annum, and that the total annual rental value of the said properties at all times has been, and still is, the sum of one thousand dollars (\$1,000.00) per annum. That the said defendant Adamson claims to have paid, since his alleged attornment, some or all of the rentals for the said property, to the defendants, or to some of them.

XVI.

That on said 30th day of November, 1911, Anson S. Blake, Leigh Sypher, Charles L. Pierce, R. W. Van Norden and Joseph Craig were the duly appointed, qualified and acting directors of the said Central Counties Land Company.

That the defendant Joseph Craig, ever since the date of the forfeiture of the charter of said Central Counties Land Company as aforesaid, has repudiated said trust, and has, in all things, acted in opposition to the interests of the said Central Counties Land Company, and adversely to it and in derogation of the trust which, as aforesaid, devolved upon [12] him as a member of the Board of Directors of said defunct corporation.

XVII.

That by mesne conveyances from said Board of Trustees, all of the title to said real property hereinabove described has become and is now vested in the plaintiff, and plaintiff is the lawful owner thereof as successor in interest of said Central Counties Land Company.

XVIII.

That the said Central Counties Land Company had the plan and purpose to erect a dam, for the purpose of impounding the flood waters of Clear Lake in the State of California, and, to that end, to build a dam at the outlet of the said Clear Lake for the purpose of maintaining and holding flood waters of the said lake at high-water mark, and said Central Counties Land Company, during its existence, held the said land hereinabove described partly and principally for the said purpose, and that the Trustees of said Central Counties Land Company, after said corporation had ceased to exist, continued to hold the said lands for the said purpose, all of which was at all times well known to the defendants, and to each and all of them.

XIX.

That it is the plan and purpose of plaintiff to use said land for the same purpose as that planned and intended by said Central Counties Land Company as aforesaid, and that plaintiff is duly authorized by its charter to make such use thereof.

XX.

That the said real property hereinabove described contains a portion of the only available damsite for impounding the waters of the said Clear Lake, and the outlet for Clear Lake [13] runs through said lands, and that without the use of the said lands, it will be impossible to store the flood waters of said lake, or for this plaintiff to carry out the purposes of its incorporation, as to said lake.

XXI.

That at the time of the execution of the aforesaid instrument by the said defendant Capay Ditch Company, purporting to convey the hereinabove described property to the defendant Yolo County Consolidated Water Company, and at the time of the execution by said last named defendant of the instrument purporting to convey said hereinabove described property to the defendants L. D. Stephens and Joseph Craig, the said defendants Capay Ditch Company, Yolo County Consolidated Water Company, L. D. Stephens and Joseph Craig were each and all indebted to the Trustees of said Central Counties Land Company in the sum or amount of fifteen thousand eight hundred twenty-five (\$15,825.00) dollars, the same being the balance due from the said last named defendants for and on account of the subscription of the said defendants to six hundred thirty-three (633) shares of the capital stock of said Central Counties Land Company, which said stock was issued to and received by the said defendants last named, and the par value of which said stock was one hundred dollars (\$100.00) per share, but upon which said stock said defendants last named paid into said corporation the sum of seventy-five dollars (\$75.00) per share, and no more; and plaintiff is informed and believes, and upon such information and belief avers, that at said time the said defendants Capay Ditch Company, Yolo County Consolidated Water Company, L. D. Stephens and Joseph Craig were indebted to the said Trustees of said Central Counties Land Company in the sum of

\$15,825.00 for and on account of the balance due on said stock subscriptions, and in divers other large sums and amounts of money, the aggregate of which said amounts and sums of money is far in excess of any sum or amount due [14] from the said Central Counties Land Company, for and on account of the said promissory notes so secured by the said deed from the said Central Counties Land Company to the said defendant Capay Ditch Company, and plaintiff is informed and believes, and upon such information and belief alleges, that the amount so due and owing by the said defendants Capay Ditch Company, Yolo County Consolidated Water Company, L. D. Stephens and Joseph Craig to the said Central Counties Land Company, and its Trustees, or their successors in interest, was, and at all times has been and is, more than sufficient to compensate the demands of the said defendants, or any or either of them, for or on account of the aforesaid promissory notes.

That the said defendants Capay Ditch Company, Yolo County Consolidated Water Company, L. D. Stephens and Joseph Craig have never paid the said amount so due and owing from them as aforesaid, or from any or either of them, or any part or portion thereof, to the said Central Counties Land Company, its Trustees or successors in interest.

XXII.

That, contemporaneously with their aforesaid transfer to plaintiff of the aforesaid lands, said Trustees of said Central Counties Land Company also transferred to plaintiff above named all of their

aforesaid demands against the said defendants Capay Ditch Company, Yolo County Consolidated Water Company, L. D. Stephens and Joseph Craig.

XXIII.

That an accounting as to the matters aforesaid and of the rents, issues and profits of the said property will be necessary to ascertain the amount, if any, of moneys now due and owing upon the said notes.

XXIV.

That all of the acts and transactions as aforesaid, wherein and whereby said defendant Yolo Water and Power Company claims to [15] own said lands, were done, as aforesaid, with full knowledge and notice of all the rights and equities of the said Central Counties Land Company, and of its Trustees, and of plaintiff as its successor in interest.

That plaintiff has no knowledge or information as to whether or not the defendants, or any or either of them, is still the owner and holder of the aforesaid promissory notes which the aforesaid instrument in writing was given to secure or of any or either of the said notes, and that a discovery will be necessary to ascertain the whereabouts and identity of the present owner and holder of the said notes.

XXV.

That the defendant Yolo Water and Power Company threatens to and will, unless restrained by this Honorable Court, proceed to construct, and will construct, a dam upon the real property hereinabove described, and will construct controlling works thereon, and will cause a considerable portion of the

said lands to be flooded.

XXVI.

That plaintiff is the owner and in possession of a large portion of the frontage of said Clear Lake, and that if such dam is built the waters of said lake will thereby be raised and impounded, and all of the lands of plaintiff along said lake frontage will be flooded.

XXVII.

That the appointment of a Receiver to take charge of the said property and to collect the rentals therefor pending this litigation is necessary in order to preserve the said property from waste and injury.

XXVIII.

That plaintiff is ready, able and willing to pay such sum as may be found, upon an accounting, to be justly due and owing, [16] for principal and interest, to the present owner or owners of each of the said several promissory notes hereinabove set forth, and hereby tenders payment of such amount as may be found to be justly due.

That plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law.

WHEREFORE, plaintiff prays that the aforesaid instrument, dated the 18th day of November, 1907, executed by said Central Counties Land Company to the Capay Ditch Company, one of the defendants herein, and which said instrument is recorded in volume 41 of Deeds, at page 161, of the Lake County, California, records as aforesaid, be adjudged to be a mortgage.

That an account be taken of the rents, issues and

profits of the said property, and of plaintiff's claims against said defendants.

That plaintiff be let into the possession of said property.

That the ownership of the said promissory notes be ascertained and determined, and that leave be granted to this plaintiff to redeem said real property upon paying to the owner and holder, or to the owners and holders, of the said promissory notes the balance, if any, that may be found to be due upon the said notes to such owner or owners.

That a Receiver be appointed to take charge of the said property and to preserve the same from damages, waste or injury during this litigation.

That the defendant Yolo Water and Power Company, its servants, agents, and employees, and all persons acting in conjunction with it, be restrained and forever enjoined from erecting or constructing any dam, or portion of a dam, or flumes, or ditches or controlling works, upon the said real property [17] described in this Bill, or upon any part or portion thereof, or from flooding any part or portion of the said lands, or any other lands belonging to plaintiff; for costs of suit, and for such other, further, different or additional relief as is meet in the premises and conformable to equity.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiff.

HARDING & MONROE,

Of Counsel. [18]

State of California,

City and County of San Francisco,—ss.

H. S. Elliot, being first duly sworn, deposes and says:

That he is the President of Power and Irrigation Company of Clear Lake, an Arizona corporation, the plaintiff above named, and that he makes this affidavit in its behalf;

That he has read the foregoing Complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

H. S. ELLIOT.

Subscribed and sworn to before me this 25th day of April, 1913.

[Seal]

ALICE SPENCER,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Apr. 25, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [19]

*In the United States District Court for the Northern
District of California.*

No. ——. IN EQUITY.

POWER & IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

THE CAPAY DITCH COMPANY, a Corpora-
tion, YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER & POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D.
STEPHENS, and JOSEPH CRAIG,

Defendants.

Motion to Dismiss Bill of Complaint.

Now come all of the defendants, by their solicitors,
and move the above-named court to dismiss the bill
of complaint in the above-entitled action, upon the
following grounds:

I.

That the facts stated in said bill of complaint are
not sufficient to constitute a valid cause of action in
equity against these defendants, or either or any of
them.

II.

That it appears upon the face of the said bill of
complaint that the cause of action therein attempted
to be set up is barred by the laches of plaintiff and
its assigns.

III.

It appears upon the face of said bill of complaint that the cause of action therein attempted to be set up is barred by the provisions of subdivision 1 of section 337 of the Code of Civil Procedure of the State of California.

IV.

It appears upon the face of said bill of complaint that the cause of action therein attempted to be set up is barred by [20] the provisions of section 343 of the Code of Civil Procedure of the State of California.

A. E. SHAW,
BERT SCHLESINGER,
S. C. DENSON,
THEODORE A. BELL,
JOHN S. PARTRIDGE,

Solicitors and of Counsel for Defendants.

Receipt of copy of the within Motion to Dismiss Bill of Complaint this 9th day of June, 1913, is hereby admitted.

CHARLES S. WHEELER and
JOHN F. BOWIE,
Solicitors for Plaintiff.

HARDING & MONROE,
Of Counsel.

[Endorsed]: Filed Jun. 9, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [21]

*In the District Court of the United States, for the
Northern District of California.*

No. 14—EQUITY.

Division 2.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation,
YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER AND POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D. STE-
PHENS and JOSEPH CRAIG,
Defendants.

**Notice of Hearing Motion to Dismiss Bill of
Complaint.**

To the Defendants, and Each of Them, in the Above-
entitled Action, and to Messrs. A. E. Shaw, Bert
Schlessinger, S. C. Denson, Theodore A. Bell,
and John S. Partridge, Their Attorneys:

You, and each of you, will please take notice that
the defendants' Motion to Dismiss the Bill of Com-
plaint in the above-entitled action, will be called for
hearing in the above-entitled court, Division 2, at the
courtroom of said Court in the Postoffice Building,
San Francisco, California, on Monday, June 16, 1913,
at 10 o'clock A. M.

Dated June 10, 1913.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Attorneys for Plaintiff.

HARDING & MONROE,
Of Counsel.

Due service and receipt of a copy of the within
Notice this 10th day of June, 1913, is hereby admitted.

BERT SCHLESINGER,

A. E. SHAW,

THEODORE A. BELL,

JOHN S. PARTRIDGE,

S. C. DENSON,

DENSON, COOLEY & DENSON,

Attorneys for Defendants.

[Endorsed]: Filed Jun. 10, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [22]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 14—IN EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation,
YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER AND POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D. STE-
PHENS and JOSEPH CRAIG,

Defendants.

Opinion and Order Dismissing Bill.

CHARLES S. WHEELER and JOHN F.
BOWIE, Attorneys for Plaintiff.

A. E. SHAW, BERT SCHLESINGER, DEN-
SON, COOLEY & DENSON, THEODORE
A. BELL and MASTICK & PARTRIDGE,
Attorneys for Defendants.

The plaintiff is a corporation organized under the laws of the State of Arizona.

The complaint avers that the Central Counties Land Company, a corporation, organized under the laws of the State of California, was on November 18th, 1907, the owner of certain lands in Lake County, and on that day borrowed from defendant Capay Ditch Company three several sums of money,

\$5,625.00, \$8,320.75 and \$10,625.00, and executed and delivered to said ditch company its three several promissory notes for the said amounts all payable on or before August 1st, 1908. That contemporaneously, and as a part of the same transaction, and solely for the purpose of securing the payment of said notes, the said Central Counties Land Company executed and delivered to said ditch company an instrument in writing, in form a grant, bargain and sale deed, but intended as a mortgage, conveying to said ditch company the said lands in Lake County; that on December 18th, 1911, the said ditch company conveyed said lands to defendant Yolo County Consolidated Water Company, which company thereafter conveyed the said lands to defendants L. D. Stephens and Joseph Craig, who in turn conveyed the same to defendant Yolo Water and Power Company, and that each and all of the defendants named took said conveyances with full knowledge of the real nature of the original deed from the Central Counties Land [23] Company to the Capay Ditch Company; that plaintiff is the successor in interest of said Central Counties Land Company, and all of the title of said lands has, by mesne conveyances, become and is now vested in plaintiff, and that all of the demands of said Central Counties Land Company against the defendants have been transferred to plaintiff.

This action seeks to have the deed to the Capay Ditch Company adjudicated a mortgage, and that leave be granted plaintiff to redeem said land by paying whatever is found to be due such defendants

as may be entitled to it. Possession of the land is also sought, as well as an accounting of the rents, issues, and profits thereof. It is further asked that a receiver be appointed to take charge of said lands and preserve the same, and that defendant Yolo Water & Power Company be enjoined from doing certain contemplated work thereon. A number of other averments of the complaint are omitted from this statement, because they have no bearing upon the question to be determined at this time.

This question arises upon a motion to dismiss the bill, upon several grounds. The one chiefly insisted upon being that the Court is without jurisdiction, because the suit is one upon a chose in action; and as the Central Counties Land Company, because a citizen of this State, could not maintain the action in this court, neither can plaintiff, its successor, do so, although a citizen of another State. This brings up for consideration the following provisions of section 24 of the Judicial Code: "No District Court shall have cognizance of any suit * * * to recover upon any promissory note or other chose in action in favor of any assignee * * * unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made."

It is strongly urged that this is not a suit upon a chose in action, but is a suit to quiet title. However the action may be denominated, it seems quite clear to me that what is [24] sought here is the enforcement of the original contract between the Central Counties Land Company and the Capay Ditch Com-

pany, and the rights asserted are based wholly thereon.

The Court is asked to declare the instrument in the form of deed to be a mortgage, and to do this because the parties agreed that it was such. If it were not for this agreement, plaintiff would have no cause of action against defendants. This agreement is a chose in action, and this suit being to recover upon it, falls within the terms of section 24, above quoted, and cannot be maintained.

The motion to dismiss will, therefore, be granted.
March 10, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 10, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

At a stated term, to wit, the March term, A. D. 1914,
of the District Court of the United States of
America, in and for the Northern District of
California, Second Division, held at the court-
room in the City and County of San Francisco,
on Tuesday, the 10th day of March, in the year
of our Lord one thousand nine hundred and
fourteen. Present: The Honorable MAURICE
T. DOOLING, District Judge.

EQUITY—14.

POWER & IRRIGATION CO. OF CLEAR LAKE

vs.

CAPAY DITCH CO. et al.

**Order Granting Defendants' Motion to Dismiss
Bill.**

Defendants' motion to dismiss the bill, heretofore heard and submitted, being now fully considered and the Court having filed its opinion thereon, it was ordered that said motion be and the same is hereby granted. [26]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

EQUITY—14.

**POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,**

Plaintiff,

vs.

**CAPAY DITCH COMPANY, a Corporation et al.,
Defendants.**

Decree.

This matter came on to be heard on the 24th day of January, 1914, upon a motion made by the defendants to dismiss plaintiff's bill of complaint upon the ground that the above-entitled court is without jurisdiction to hear and determine the said cause; thereupon the said motion was argued by counsel for the respective parties, and submitted to the Court for its decision, and all and singular, the premises having been duly considered by the Court, and it appearing that the said Court is without jurisdiction to hear and determine the said cause,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said bill of complaint and the said cause be and the same are hereby dismissed, and that said defendants recover their costs herein, taxed at the sum of \$6.10.

M. T. DOOLING,
Judge of Said Court.

[Endorsed]: Filed and Entered March 24, 1914.
Walter B. Maling, Clerk. By J. A. Schaertzer,
Deputy Clerk. [27]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 14—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation,
YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER AND POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D. STE-
PHENS and JOSEPH CRAIG,
Defendants.

**Petition for Order Allowing Appeal and Order
Allowing Appeal.**

To the Honorable Court Above Entitled:

The above-named plaintiff, Power and Irrigation
Company of Clear Lake, a corporation, considering

itself aggrieved by the decree made and entered in the above-entitled court on the 24th day of March, 1914, in the above-entitled cause, hereby appeals therefrom to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons and upon the grounds specified in its Assignment of Errors filed herewith, and prays that this Appeal may be allowed; and that a transcript of the record, proceedings, and papers upon which said decree was made and entered as aforesaid, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its said appeal, be made.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiff. [28]

Order Allowing Appeal [and Fixing Amount of Bond].

The foregoing Petition for Appeal is hereby granted, and the appeal is allowed, upon the petitioner filing a bond in the sum of Three Hundred Dollars (\$300.00), to be conditioned as required by law.

Dated September 23, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [29]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 14—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation,
YOLO COUNTY CONSOLIDATED
WATER COMPANY, a Corporation, YOLO
WATER AND POWER COMPANY, a Cor-
poration, J. M. ADAMSON, L. D. STE-
PHENS and JOSEPH CRAIG,
Defendants.

Assignment of Errors on Appeal.

Now comes the plaintiff in the above-entitled action by its attorneys, Charles S. Wheeler and John F. Bowie, and avers that the decree entered in the above-entitled cause on the 24th day of March, 1914, is erroneous and unjust to the plaintiff, and files with its petition for an appeal from the said decree, the following Assignment of Errors, and specifies that the said decree is erroneous in each and every of the following particulars, viz.:

1. The said District Court of the United States for the Northern District of California was not without jurisdiction to hear and determine the said cause,

and the order, judgment, and decree of said Court granting defendant's motion and dismissing the said bill of complaint and the said cause for want of jurisdiction is therefore erroneous.

2. The said Court erred in holding that section 24 of the Judicial Code deprived it of jurisdiction in the above-entitled cause, forasmuch as the provisions of said section 24 are not applicable to the case at bar.

3. The said Court erred in holding that plaintiff's cause [30] of action is based upon a chose in action within the meaning of that phrase as used in section 24 of the Judicial Code, forasmuch as plaintiff's cause of action is not based on a chose in action within the meaning of that phrase as used in section 24 of the Judicial Code, but is an action to remove a cloud from a title and to redeem from a mortgage, and for an injunction to restrain the erection of a dam and for other equitable relief.

4. The Court erred in holding that the rights of the Central Counties Land Company in and to the real property in controversy, to which rights plaintiff succeeded by mesne conveyances, constitute a mere chose in action within the meaning of that phrase as used in section 24 of the Judicial Code.

5. The said Court erred in holding that plaintiff's action is an action upon an agreement between the parties that an instrument in form of a deed shall be considered a mortgage, forasmuch as the law and not any agreement of the parties has created the rights asserted in the bill.

6. The Court erred in holding that plaintiff is the assignee of a mere chose in action as regards the lands

described in the bill, forasmuch as the title to the lands in question is shown by said bill to be presently vested in the plaintiff.

7. The Court erred in holding that the bill seeks the enforcement of the original contract between the Central Counties Land Company and the Capay Ditch Company, forasmuch as such is not the gravamen of plaintiff's cause of action.

8. The Court erred in holding that the rights asserted in the action are based wholly upon the original contract between the Central Counties Land Company and the Capay Ditch Company; whereas, the fact is, that the rights and equities relied on in the bill arise out of the circumstance that by mandate [31] of express law no title passed under the indenture set forth in the bill.

WHEREFORE, the plaintiff prays that the said decree be corrected or reversed, and the District Court directed to deny said Motion to Dismiss, or that such other relief be awarded as the nature of the case demands.

CHARLES S. WHEELER and
JOHN F. BOWIE.

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [32]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 14—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation; YOLO
COUNTY CONSOLIDATED WATER COM-
PANY, a Corporation; YOLO WATER AND
POWER COMPANY, a Corporation; J. M.
ADAMSON; L. D. STEPHENS, and JO-
SEPH CRAIG,
Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, Power and Irrigation Company of Clear
Lake, as principal, and Pacific Coast Casualty Co., as
surety, of the City and County of San Francisco,
State of California, are held firmly bound unto
Capay Ditch Company, a corporation; Yolo Consoli-
dated Water Company, a corporation; Yolo Water
and Power Company, a corporation; J. M. Adamson,
L. D. Stephens, and Joseph Craig in the sum of
\$300, lawful money of the United States, to be paid
to them and their respective executors, administra-
tors, and successors and assigns; to which payment,
well and truly to be made, we bind ourselves and each
of us, jointly and severally, and each of our succes-

sors and assigns, by these presents.

Sealed with our seals and dated this 23d day of September, 1914.

WHEREAS, the above-named Power and Irrigation Company of Clear Lake has obtained an appeal to the Circuit Court of [33]. Appeals of the United States to correct or reverse the decree of the District Court for the Ninth District of California, in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Power and Irrigation Company of Clear Lake shall prosecute its said appeal to effect and answer all costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

POWER AND IRRIGATION COMPANY
OF CLEAR LAKE.

By H. S. ELLIOT,
President.

By R. H. BORLAND.

[Seal Power and Irrigation Company.]

PACIFIC COAST CASUALTY COMPANY.

By R. W. STEWART,
Attorney in Fact.

[Seal Pacific Coast Casualty Company.]

Approved September 23d, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [34]

*In the United States District Court for the Northern
District of California, Second Division.*

No. 14—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation; YOLO
COUNTY CONSOLIDATED WATER COM-
PANY, a Corporation; YOLO WATER AND
POWER COMPANY, a Corporation; J. M.
ADAMSON; L. D. STEPHENS and JO-
SEPH CRAIG,

Defendants.

Praeipie for Transcript on Appeal.

To the Clerk of Said Court:

Sir: Please make up, print, and issue in the above-entitled cause a certified transcript of the record, upon an appeal allowed in this cause, to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, the said transcript to include the following:

Bill to Redeem;

Motion to Dismiss Bill of Complaint;

Notice of Hearing Motion to Dismiss Bill of Com-
plaint;

Opinion of Court (Dooling, J.);

Minute Order of Tuesday, March 10, 1914;

Decree Dismissing Bill;

Petition for Allowance of Appeal, and Order Endorsed Thereon;

Assignment of Errors on Appeal;

Citation on Appeal;

Bond on Appeal;

Praeceptum for Transcript. [35]

You will please transmit to the Circuit Court of Appeal, with the record to be prepared as above, the Original Citation on Appeal.

CHARLES S. WHEELER, and
JOHN F. BOWIE,

Solicitors for Appellant.

Service and receipt of a copy of the within Praeceptum this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,
A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY & DENSON,
Attorneys for Defendants.

[Endorsed]: Filed Sep. 23, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 14—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation; YOLO
COUNTY CONSOLIDATED WATER COM-
PANY, a Corporation; YOLO WATER AND
POWER COMPANY, a Corporation; J. M.
ADAMSON; L. D. STEPHENS, and JO-
SEPH CRAIG,

Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing thirty-six (36) pages, numbered from 1 to 36, inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$24.60; that said amount was paid by Charles S. Wheeler and John F. Bowie, Esqs.; and that the original Citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of October, A. D. 1914.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [37]

*In the United States Circuit Court of Appeals for the
Ninth Judicial Circuit.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff and Appellant,
vs.

CAPAY DITCH COMPANY, a Corporation; YOLO
COUNTY CONSOLIDATED WATER COM-
PANY, a Corporation; YOLO WATER AND
POWER COMPANY, a Corporation; J. M.
ADAMSON; L. D. STEPHENS, and JO-
SEPH CRAIG,
Defendants and Appellees.

Citation on Appeal [Original].

United States of America,—ss.

The President of the United States, to Capay Ditch
Company, a Corporation, Yolo County Consoli-
dated Water Company, a Corporation, Yolo
Water and Power Company, a Corporation, J.
M. Adamson, L. D. Stephens, and Joseph Craig,
Greeting:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals,

for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 22 day of October, 1914, being within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the District Court of the United States for the Northern District of California, in the suit numbered 14—Equity, in the records of said court, wherein Power and Irrigation Company of Clear Lake, a corporation, is plaintiff and appellant, and you and each of you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said plaintiff and appellant, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in [38] that behalf.

WITNESS, the Honorable M. T. DOOLING,
United States District Judge for the Northern District of California, this 23 day of September, 1914.

M. T. DOOLING,
Judge. [39]

Service and receipt of a copy of the within Citation this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,

A. E. SHAW,

BERT SCHLESINGER,

DENSON, COOLEY & DENSON,

Attorneys for Defendants.

[Endorsed]: No. 14. In the United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Plaintiff, vs. Capay Ditch Company, a Corporation,

et al., Defendants. Citation on Appeal. Filed Sep. 23, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2500. United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Appellant, vs. Capay Ditch Company, a Corporation, Yolo County Consolidated Water Company, a Corporation, Yolo Water and Power Company, a Corporation, J. M. Adamson, L. D. Stephens and Joseph Craig, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division. Filed October 21, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

